

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT

THE VERMONT COUNTRY STORE, INC.,

Plaintiff,

-against-

VERMONT GENERAL STORE ROUTE 100
PITTSFIELD VERMONT, LLC,

Defendant

Docket No. 1:05-CV-328

2006 SEP 12 PM 12:43
FILED
BY *WJP*
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DISTRICT OF VERMONT
FILED

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER

PRATT VREELAND KENNELLY MARTIN & WHITE, LTD.
John J. Kennelly, Esq.
64 North Main Street - US Route 7 North
P.O. Drawer 280
Rutland, Vermont 05702
Tel: 802-775-7141; Fax: 802-775-6483

HESLIN ROTHENBERG FARLEY & MESITI P.C.
Susan E. Farley, Esq.
Alana M. Kennelly, Esq.
5 Columbia Circle
Albany, New York 12203
Tel.: (518) 452-5600; Fax: (518) 452-5579

Attorneys for Defendant

NOW COMES Defendant, by and through counsel of record, and files this Motion For a Protective Order pursuant to FRCP 26(c)(2), requesting that the deposition of non-party witness, Jayne Major, either not be held and/or be held at a later date. Based on the declaration of Alana M. Fuierer, Esq., submitted herewith, the Exhibits attached thereto, and the reasons set forth in the below memorandum, Defendant respectfully requests an order from the Court granting a Protective Order postponing the non-party deposition of Jayne Major and/or allowing Defendant the opportunity to recall the witness for cross-examination at a later date.

DISCUSSION

On September 11, 2006, Defendant's counsel received notice from Plaintiff that a subpoena had been issued for the deposition of a non-party witness, Jayne Major, for the *following day* September 12, 2006, in connection with the above-captioned matter.

Even before this deposition notice was issued, the deposition schedule for the week of September 11, 2006 already was aggressive, with the parties attempting to fit 8 depositions into 3 ½ days. During a conference call on Friday, September 8th, Plaintiff's counsel told defense counsel for the first time that it was also taking the deposition of Jayne Majors the following week. A subpoena had not yet been issued or served for this non-party witness. In fact, a subpoena for Ms. Majors was not issued, and notice was not served on defense counsel, until Monday, September 11, 2006, while defense counsel was traveling to Vermont. As a result, with less than 24 hours notice, Defendant's counsel is not able to properly prepare a cross-examination for Ms. Major's deposition noticed for 2:00 pm on September 12, 2006.

By signing this motion, the undersigned counsel certifies that, as required by Rule 26(c) of the Federal Rules of Civil Procedure and the local rules, upon information and belief, Defendant's counsel, Ms. Farley and/or Mr. Kennelly, attempted to confer with counsel for

Plaintiff during the conference call held on Friday, September 8, 2006, regarding this matter. During this call, when plaintiff's counsel expressed its intent to depose Ms. Major (but still had not issued a subpoena), Defendant's counsel raised the issue of inadequate notice, but Ms. Adler dismissed defense counsel's concern and persisted in noticing the deposition of non-party witness, Jayne Major for September 12, 2006, at 2:00 pm.

Due to the exigent circumstances of this matter, there is no time for defendant's counsel to further meet and confer with plaintiff's counsel.

CONCLUSION

Based upon the foregoing, Defendant respectfully requests this Court grant Defendant's motion for a protective order, and issue an order that the deposition of Jayne Major not take place, or be postponed until September 18 or 19, 2006. In the alternative, Defendant requests an order providing Defendant the opportunity to recall the witness for cross-examination at a later date. Defendant makes this motion in good faith.

Dated: September 12, 2006



PRATT VREELAND KENNELLY MARTIN & WHITE, LTD.
Sharen Underwood, Esq.
John J. Kennelly, Esq ()
64 North Main Street - US Route 7 North
P.O. Drawer 280
Rutland, Vermont 05702
Tel: 802-775-7141; Fax: 802-775-6483

HESLIN ROTHENBERG FARLEY & MESITI P.C.
Susan E. Farley, Esq.
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